



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

10

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO.       |
|--|-------------|----------------------|---------------------|------------------------|
| 10/624,909   | 07/21/2003  | Eileen Tozer         | D1410-2US           | 7087                   |
| 29062  | 7590        | 06/11/2007           | EXAMINER            |                        |
| DIVERSA CORPORATION<br>4955 DIRECTORS PLACE<br>SAN DIEGO, CA 92121 |             |                      |                     | BERTAGNA, ANGELA MARIE |
| ART UNIT   |             | PAPER NUMBER         |                     |                        |
|  |             | 1637                 |                     |                        |
| MAIL DATE  |             | DELIVERY MODE        |                     |                        |
| 06/11/2007   |             | PAPER                |                     |                        |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|   |   |                                  |
|---|---|----------------------------------|
| <b>Advisory Action<br/>Before the Filing of an Appeal Brief</b> | Application No.                           | Applicant(s)                     |
|   | 10/624,909<br>Examiner<br>Angela Bertagna | TOZER ET AL.<br>Art Unit<br>1637 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
  - a)  The period for reply expires 5 months from the mailing date of the final rejection.
  - b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on 24 May 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
  - (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5.  Applicant's reply has overcome the following rejection(s): none.
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 189.

Claim(s) objected to: 225.

Claim(s) rejected: 1,14,15,29,33,35,40,43-45,48,49,87,188,192,203-207,217,218 and 225-228.

Claim(s) withdrawn from consideration: see note below.

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13.  Other: \_\_\_\_\_

JEFFREY FREDMAN  
PRIMARY EXAMINER

11/17/07

Continuation of 3. The proposed amendments will not be entered, because they raise issues that require further search and consideration and also do not place the application in better condition for allowance. The proposed amendments to claims 1 and 33 require further search and consideration, because they require consideration of identity to the entire sequence recited in SEQ ID NO: 29, where the previous claims only required consideration of identity to a portion of SEQ ID NO: 29. The proposed amendments to claim 29 also require further search and consideration, because the new hybridization conditions recited in part (a) have not been previously presented for consideration. Finally, the proposed amendments to claim 192 require further search and consideration, because they broaden the scope of the claim beyond what has been previously considered. Furthermore, the proposed amendments do not place the application in better condition for allowance, because they do not overcome all of the rejections of record. The proposed amendments would overcome the outstanding prior art rejections, but would not overcome the outstanding rejection under 35 U.S.C. 112, 1<sup>st</sup> paragraph (written description). Therefore, the proposed amendments have not been entered.

Continuation of 7. Claims withdrawn from consideration: 42, 51, 54, 56, 58, 106-107, 111, 113, 116, 138, 143, 174, 175, 177, 182, 184, 187, 190, 208, 215-216, 219-224, and 229-231.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are directed to the claims as amended. Since the amendments were not entered, these arguments are moot.